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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

*[Protest Alleging Failure of Army to Furnish Material Amendment
To IFB]*

FILE: B-198885

DATE: July 17, 1980

MATTER OF: C-Way Construction Company

DIGEST:

Protester contends that contract awarded to another firm should be terminated and requirement readvertised because contracting agency did not furnish material amendment to it, thus rendering its bid nonresponsive. Protest is denied because protester has not shown that Government was responsible for its failure to receive and acknowledge amendment where Army reports that it was sent.

C-Way Construction Company (C-Way) protests the contract award to King Company by the Army Corps of Engineers under invitation for bids (IFB) No. DACW35-80-B-0031 for four maintenance dredging projects. C-Way contends that the contract should be terminated and the requirement readvertised because the Army did not furnish C-Way a copy of a material amendment to the IFB, thus rendering C-Way's bid nonresponsive. All other bidders acknowledged the amendment.

Six days prior to the date that the IFB was sent to C-Way, the IFB was amended. C-Way, however, states that it did not receive the amendment. In support, C-Way provides the sworn statement of its chief executive officer, who has firsthand knowledge of this matter. He says that the package sent by the Army contained the IFB, but not the amendment.

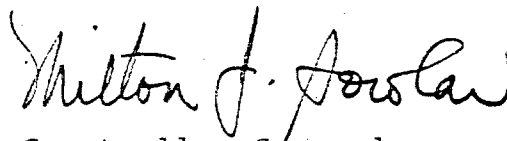
In response, the Army reports that C-Way was sent both the IFB and the amendment. In support, the Army provides the signed statement of the procurement clerk responsible for sending the package to C-Way. She states that she sent both the IFB and the amendment to C-Way.

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Generally, if a bidder does not receive and acknowledge a material amendment to an IFB and such failure is not the result of a conscious and deliberate effort to exclude the bidder from participating in the competition, the bid must be rejected as nonresponsive. Commercial Lawn Maintenance, Inc., B-193626, February 1, 1979, 79-1 CPD 78, and decisions cited therein. Here, the record is in conflict regarding whether the Army sent C-Way the amendment. In these circumstances, we must conclude that C-Way has not carried its burden of establishing the validity of its contention that the Government was responsible for C-Way's failure to be aware of the amendment. Scott-Griffin, Incorporated, B-193053, February 9, 1979, 79-1 CPD 93.

Finally, C-Way believes that two decisions of our Office are applicable here. We disagree. Our decision B-171285, March 25, 1971, held that where a bidder, to its prejudice, is alone furnished information affecting price in an irregular manner, the invitation was properly canceled since bidders did not compete on an equal basis. Next, our decision B-153422, April 21, 1964, held that the agency was justified in canceling a solicitation after bid opening because it failed to advise two bidders of the existence of a material amendment. Neither situation is similar to the instant one.

Accordingly, C-Way's protest is denied.



For the Comptroller General
of the United States